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1   RECORD OF ORAL HEARING

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3   UNITED STATES PATENT AND TRADEMARK OFFICE

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6   BEFORE THE BOARD OF PATENT APPEALS

7   AND INTERFERENCES

8   _____

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10   Ex parte RODNEY G. JOHNSON

11   _____

12

13   Appeal 2009-005701

14   Application 10/663,436

15   Technology Center 3600

16   _____

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18   Oral Hearing Held: December 3, 2009

19   _____

20

21   Before JENNIFER D. BAHR, STEFAN STAICOVICI, and FRED A.

22   SILVERBERG, *Administrative Patent Judges.*

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24

25   ON BEHALF OF THE APPELLANT:

26

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34   The above-entitled matter came on for hearing on Thursday, December 3,

35   2009, commencing at 9:30 a.m., at the U.S. Patent and Trademark Office,

36   600 Dulany Street, Alexandria, Virginia, before Jan Jablonsky, Notary

37   Public.

1   P R O C E E D I N G S
2

3   MR. LITMAN: How are you this morning?

4   JUDGE BAHR: Fine, thanks.

5   MR. LITMAN: May it please the Court, I would like to start off with

6   a little background on the technology itself and its use in the marketplace to

7   explain the significance of the actual advances and the technology

8   represented by these claims.

9   In the gaming industry one of the largest concerns is the fraud

10   committed on the casino by exchanging cards, marking cards, adding cards

11   into the decks, because this changes the odds. It gives the player an absolute

12   advantage, and the casinos are there to make money, not surprisingly. What

13   is critical in this is the control of the cards, the identification of the cards that

14   are being used in the casino at any time.

15   The present technology focuses on one particular element, which is in

16   the last limitation in claim 20, for example. That is that there is a sensor in

17   the card shuffler which reads each card individually. That limitation in itself

18   is not new. That is shown by Roblejo. It is known in the art. We're not

19   arguing that that in itself is novel. What is novel is that the identity of each

20   card is displayed on the shuffler itself by an image of the suit and rank of

21   that particular card. What is critical in this regard is that this element ties

22   into other capabilities of the shuffler in detecting fraud.

23   What happens is the card is identified and displayed, but that card

24   that's being identified can also be particularly a fraudulent card, and so the

25   presence of a fraudulent card will be immediately detected when it is

26   reinserted into the shuffler for reuse. The benefit of this is that this gives an

1   instantaneous recognition of the use of a false card in the previous hand, and

2   that can be backtracked immediately to the player that used it. This is much

3   more efficient than what is going on with Roblejo. Roblejo has been cited as

4   showing far more than it actually discloses.

5   There are two elements in the disclosure of Roblejo that are being

6   cited in the rejection. Those elements are on column 4, lines 11 through 14,

7   and column 4, lines 31 through 38. What Roblejo says here is that when a

8   false card, damaged card, marked card is discovered in the shuffling

9   operation, it is ejected by some undisclosed mechanism. He gives a broad

10   general statement to this effect. But if you look at Roblejo, the capability of

11   ejecting a false card is not only not enabled, but is highly problematic and

12   does not teach what is in our claim, which is the display of an image of a

13   specific card that has been just recently inserted in the machine to show that

14   it's fraudulent.

15   Specifically, Roblejo says the apparatus sends a signal, either

16   audio -- audible, visual to a network administrator by ejecting a card which

17   does not belong in the set. Now for Roblejo to eject a card that does not

18   belong in the set, particularly in the way that Roblejo reads the cards, he has

19   to insert the card into the carousel chamber, identify at some point that it is

20   an erroneous card -- and he cannot do that until essentially the complete set

21   of cards has been put into the apparatus because he cannot detect a double

22   card until all the cards are in the apparatus -- then rotate the carousel around

23   to the ejection position and then eject a card which he believes is fraudulent.

24   The improvement in our case is that upon insertion of the card into the

25   device, we can get that instantaneous display of the suit and rank of a card to

26   know immediately that that card is fraudulent, and therefore immediately

1   trace that card back to the previous hand used. Roblejo does not have

2   anywhere in here specifically a display on the shuffler. Roblejo does not

3   say, "Display the suit and rank of a card." He may give a buzzer warning or

4   flashing lights when the card is ejected, but the only step that Roblejo

5   provides in alerting the possibility of a damaged, bent, fraud marked card is

6   ejecting the card.

7   The Examiner attempts to bring additional art into play to establish

8   that it would be obvious to do so, but the primary reference that he uses to

9   show the display of the suit and rank of a card, and in fact the only

10   secondary art that shows the display of the suit and rank of a card is

11   basically a handheld toy game, in which you have the entire game being

12   played with simulated cards, simulated deck, and the rules that you want to

13   play. You push buttons and it shows you the cards that it has. There is no

14   reading of cards, there's no fraudulent -- no display of fraudulent cards by

15   suit and rank or anything else.

16   It is impossible for Macheel, the secondary reference which shows the

17   display of suit and ranks, to have fraudulent cards. Everything is

18   preprogrammed in by way of software. It is totally unrelated to any element

19   of fraud whatsoever. All it says is that it displays all the cards being used by

20   the player at that time. There is no nexus in going from what is in Roblejo,

21   which does in fact show the reading of individual cards and the ejecting of a

22   damaged card or a fraudulent card through complete physical use of the

23   apparatus and ejection of the card, and tying that to what is in the invention

24   as in claim 20, the last line, which is giving a visual display of the suit and

25   rank of the actual card identified. That is not shown in any art of reference.

1   It's also important to note that in some of the sub-claims there is a

2   specific reference, which is referred to in the brief of displaying specific

3   cards which are absent from the entire set of cards have been reviewed, so it

4   would show when cards had been removed from the deck. It is absolutely

5   impossible for Roblejo to show cards that are absent, because the only

6   information he provides is the cards as present. There is no showing in

7   Roblejo or Grauzer or Macheel of the display of cards by their suit and rank

8   that are absent from the deck.

9   JUDGE BAHR: But Roblejo does make a determination that cards

10   are absent from the deck, correct?

11   MR. LITMAN: He makes a determination that there is a complete set

12   of cards or not.

13   JUDGE BAHR: Or that there is an incomplete --

14   MR. LITMAN: Or not, right, which would inherently say some cards

15   are absent. But there is no ability to display the actual cards that are, in fact,

16   absent. Roblejo's only signal is the ejection of cards that are in excess,

17   fraudulent, marked, or damaged. He can't eject a card that isn't there.

18   JUDGE BAHR: Well, Roblejo does in column 4, line 14 -- I'm sorry,

19   13 -- it says, "by ejecting a card which does not belong." Then it says, "or

20   by any other means to indicate an inaccurate deck." And I agree with you,

21   that still doesn't say it's displaying it by rank and suit. But doesn't that open

22   up a possibility that maybe the card is not ejected, and that there is some --

23   MR. LITMAN: I think the way this language is presented, this is a

24   supplement to the ejecting, because what it said -- "the apparatus sends a

25   signal, either audible or visual -- to a network administrator by ejecting a

26   card." That "by ejecting" is the actual step. There could be a buzzer, a

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1 clicking, a flashing light that goes on, the signal that in fact the card is being

2 ejected for a special purpose. But I think that ejecting of the card is

3 absolutely a critical and required element for display by Roblejo of the --

4 JUDGE BAHR: Well, it may not be ejecting a card, because it may,

5 in fact, have determined that there were -- that it was an incomplete deck, in

6 which case it wouldn't be ejecting it.

7 MR. LITMAN: And then the buzzer clicking would be going out.

8 But I agree that is a possibility. But still there is nothing in any of the other

9 references that would show that with the timing reflected in the claim of

10 reading the card as it passes from the in-feed into the shuffling area that the

11 card would then be signaled for display by suit and rank as frauds. This

12 gives an earlier indication that could be possible from Roblejo, which has to

13 ascertain the entire set of cards at that time.

14 Roblejo has broad language, no description, no enablement, no

15 structure that would allow what is being done in our claims to be done. This

16 is the kind of reference that patent prosecutors hate, because it says

17 everything and nothing, because there are words there that can be interpreted

18 any way you like. It doesn't do what we have, and the other references do

19 not support it.

20 Looking at the other independent claims, similar arguments have been

21 presented specifically for those limitations. Let me refer to -- okay.

22 I -- okay. I pointed out that Macheel does not have a flaw identification

23 relevance whatsoever, that it is -- am I speaking too loudly?

24 THE REPORTER: No, you're fine, thank you.

25 MR. LITMAN: I've been accused of that before -- cannot have any

26 indication of relevance to full identification. Applicants do not claim they

1 invented a display screen with a suit and rank on it. But the display screen

2 on the shuffler to give immediate identification to the pit crew of the

3 presence of a particular fraudulent card and identifying that fraudulent card

4 so that it can be immediately tracked back to the previous hand of play, is

5 such a significant advance in security in the casinos as to clearly be an

6 obvious step from what was done by Roblejo in merely ejecting a card.

7 Going to Grauzer, does not have any impact on the failure of Roblejo

8 shown above. There is no disclosure of the visual display of the suit or rank

9 of particular cards having deficiencies or excesses in the card rank.

10 Grauzer's display has inputs from the dealer, status of shuffler jams, counts

11 on how many times the system's been used. Again, there is no teaching that

12 one should display on the shuffler the suit and rank of a card that is defective

13 or absent and the benefit of that showing. That is not shown by the art.

14 JUDGE BAHR: And that's consistent with the Examiner's -- or at

15 least not inconsistent with the Examiner's findings, too. I think Grauzer was

16 only relied upon by the Examiner for placement of the card reader --

17 MR. LITMAN: Yes. For what the Examiner shows Grauzer for, the

18 physical placement of the card reader, I agree. But the fact is the invention

19 resides in the use of the information obtained by that display at that time

20 directly after the card put to show the suit and rank of a card. If you can just

21 imagine in the casino if someone comes in with a masked card, a hidden

22 card, plays it in a hand with a maximum bet on it of thousands of dollars,

23 wins the bet and walks out, Roblejo, five minutes later, ten minutes later,

24 would be able to say, "Something is wrong with this deck." In the present

25 circumstances, upon insertion of that hand back into the shuffler

26 immediately after play, within five seconds we would know of the fraud.

1   That's enough to catch somebody before he walks out the door, and to a

2   casino, that's important.

3   JUDGE BAHR: I can understand your position. I don't have any

4   questions.

5   MR. LITMAN: Thank you very much.

6   JUDGE BAHR: Thank you. We'll take this case under advisement.

7   (Whereupon, at 9:18 a.m., the proceedings were concluded.)